

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *peg* D.C.  
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THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TENN. MEMPHIS

TIG INSURANCE COMPANY,

Plaintiff,

v.

No. 04-2666 B

MERRYLAND CHILDCARE AND  
DEVELOPMENT CENTER, INC., et al.,

Defendants.

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ORDER OVERRULING OBJECTIONS TO MAGISTRATE JUDGE'S ORDER  
AND AFFIRMING ORDER GRANTING PLAINTIFF'S MOTIONS TO  
COMPEL PRODUCTION OF DOCUMENTS AND TO HAVE REQUESTS  
FOR ADMISSIONS DEEMED ADMITTED

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On October 26, 2005, Magistrate Judge Diane Vescovo entered a order granting the October 3, 2005 motions of the Plaintiff, TIG Insurance Co. ("TIG"), to compel production of documents from the Defendant, Merryland Childcare & Development Center, Inc. ("Merryland"), and to have the Plaintiff's requests for admission deemed admitted by Merryland. The motions were granted on the basis that Merryland had failed to respond thereto within the time permitted under the Local Rules of this district.<sup>1</sup> Defendants Merryland and Tony Taylor have filed a timely appeal of the order, to which TIG has responded.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, upon the filing of objections, the district court judge is to "consider such objections and . . . modify or set aside any portion of the

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<sup>1</sup>Under the Local Rules of this district, responses to non-dispositive motions "shall be filed within fifteen days after service of the motion . . ." LR7.2, Local Rules of the U.S. Dist. Ct. for the W. Dist. of Tenn. "Failure to respond timely to any motion . . . may be deemed good grounds for granting the motion." Id.


magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed 746 (1948).

The motions ruled on by the magistrate judge reflect in their certificates of service that they were served on the Plaintiffs on October 3, 2005. In their appeal, the Plaintiffs do not deny timely service of the motions at issue,<sup>2</sup> arguing instead that their response was not due under October 27, 2005, two days after the magistrate judge rendered her decision. Allowing 15 days for response plus three days for mailing would, however, have made the Defendants' response to TIG's motions due on October 21, 2005. As no response was filed by that date (indeed, no response was filed at all), the undersigned cannot find that the magistrate judge's conclusion was clearly erroneous or contrary to law. Thus, the appeal is DENIED and the order of the magistrate judge is AFFIRMED.

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<sup>2</sup>The Defendants instead make the rather vague claim that "[a] letter from Attorney Greg O'Neal, dated October 5, 2005 purporting to have been mailed to the Defendants on the same date was actually received on October 12, 2005 . . .; He [sic] sent a packet a few days earlier and these were all clipped together[.]" (App. of Magistrate's Order Granting Pl.'s Mots. to Compel Prod. of Docs. and to Have Reqs. for Admissions Deemed Admitted at 1.) The letter referred to by the Defendants has nothing, however, to do with the motions; but is a cover letter for TIG's Second Requests for Admissions to the Defendant Merryland. See App. of Magistrate's Order Granting Pl.'s Mots. to Compel Prod. of Docs. and to Have Reqs. for Admissions Deemed Admitted, Ex. A. It is unclear whether the "packet a few days earlier" included the motions. What is important in considering the instant appeal is not what the Defendants argue, but what they do not. That is, they have made no allegation that service of the motions did not occur according to the certificates of service.

IT IS SO ORDERED this 8<sup>th</sup> day of December, 2005.

  
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J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



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US DISTRICT COURT